

Please be advised retail sales made to Medicare and Medicaid are exempt from tax as sales to a government body so long as the exemption is properly documented. See 86 Ill. Adm. Code 130.2080(a). (This is a GIL).

May 6, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter, dated April 14, 1999, that was forwarded to the Department from the Illinois Department of Public Aid. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

On behalf of COMPANY, please accept this letter as a Request for Advisory Opinion concerning sales tax levied to Medicaid recipients. For clarification purposes, I pose the following questions:

"Are Medicaid recipients required to pay sales tax if they reside in a long-term care facility or a hospital? If so, on what services and/or products?"

I hereby request that you review this matter at your earliest convenience.

Department Response:

The Retailers' Occupation Tax Act (35 ILCS 120/1 et seq.) requires that physicians, clinics or other entities purchasing tangible personal property for the purpose of resale, and not for use or consumption, provide their seller with a Certificate of Resale that contains the items of information required by 86 Ill. Adm. Code 130.1405(b), enclosed.

Also, when physicians, clinics or other entities make retail sales to Medicare and Medicaid, such sales are exempt from tax as sales to a government body so long as the exemption is properly documented. See 86 Ill. Adm. Code 130.2080(a). While no tax may be due on payments made directly to vendors by Medicare or Medicaid, tax is due upon any portion of bills not covered by Medicare and Medicaid that are paid by individuals or private insurance companies. This means when Medicare directly pays 80% of the medical bill and the remaining 20% is billed to the patient or his insurance company, assuming proper documentation of the exemption, the 80% is tax exempt as a governmental payment while the 20% is taxable.

However, most hospitals and long-term care facilities are not considered to be in the business of making retail sales subject to the Retailers' Occupation Tax Act. Rather, they are considered to be servicemen. Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Such

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transactions are governed by the Service Occupation Tax (35 ILCS 115/1 et seq.). Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred incident to a sale of service may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must account for their tax liability in a second fashion that involves using 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service.

The third way servicemen may account for their tax liability only applies to "de minimis" servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f), enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their

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suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers, nor are they liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

Whether sales made to Medicare and Medicaid are exempt from Service Occupation Tax as sales to a government body, depends upon whether the servicemen are registered, or are unregistered de minimis servicemen. If the servicemen are registered, sales made to Medicare and Medicaid are exempt, and no tax is due on payments made directly by Medicare or Medicaid. However, as stated above, tax is due upon any portion of bills not covered by Medicare and Medicaid that are paid by individuals or private insurance companies. See, 86 Ill. Adm. Code 140.125(h)(3) and 130.2080, enclosed.

Please note that if servicemen are unregistered de minimis servicemen, they cannot currently deduct such sales. These servicemen are utilizing the fourth method of calculating their tax base described above and are considered the end users of the tangible personal property purchased for transfer incident to service. They pay Use Tax to their suppliers and are not liable for Service Occupation Tax.

I hope this information is helpful. I realize that determinations of tax liabilities can be difficult, especially when one is attempting to mesh the complexities of the Service Occupation Tax with issues involving Medicaid payments. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, you may contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk

Enc.